

BY MR. ROSENTHAL:

Q Well, what did you do then? A Well, I went out into the kitchen, and my mother said he was ignorant, and didn't know nothing.

MR. ELY: I object, unless the defendant was there.

MR. ROSENTHAL: The defendant was there.

MR. ELY: And I object to counsel testifying.

MR. ROSENTHAL: And I object to your method of objecting, too.

BY MR. ROSENTHAL:

Q Was the defendant there then, at that time? A The defendant got up, and got out into the kitchen, then, and said he wasn't ignorant.

Q And then what happened? A And then my father, in the meantime, had gone downstairs for a pint of beer; and, when he came back, the can was empty; and he said he couldn't get any.

And so then he -- my husband -- the defendant said for me to take off my things, and I said, I would, providing he wouldn't slap me, as he had, the previous Saturday. He had stayed out late in the afternoon --

MR. ELY: Objected to. I object to this.

THE COURT: Complete the answer.

A (Answer continued): He had stayed out, that Saturday afternoon, and I scolded him.

MR. ELY: I object to that, and ask to have it stricken out.

THE COURT: Motion granted. It isn't competent evidence.

BY MR. ROSENTHAL:

Q And what happened after that?

A. My step father said I would go home with him, and the defendant said I wouldn't; that my home was there, and I should stay there.

And my step father, he had reared me since I was eleven years of age, and I would go home, and he struck the defendant in the face.

Q Well, as matter of fact, did he rear you since you were 11 years old?

MR. ELY: Objected to.

THE COURT: Sustained.

MR. ROSENTHAL: Exception.

BY MR. ROSENTHAL:

Q What happened then, Mrs. Lefevre? A Then the defendant pushed him over (illustrating), and my mother took the broom, and started to beat the defendant with the broom; and I went in between them, and she struck me in the face, on the side of the eye, with the broom, and I said, "Mama, I got that blow." Then --

Q Were there any visible marks there? A I had a black eye, and I have a slight lump there, that hasn't never gone away.

Q Well, what was the condition of your father, when he arrived home, at your house? A He was intoxicated.

Q What was the condition of your mother, when she arrived there, at your house? A She was intoxicated, also.

Q Was any -- what happened right then, at that time?

MR. ELY: I object. What time?

BY MR. ROSENTHAL:

Q Immediately after the starting of the striking with the broom, and she struck you, and you said, "Mama, you struck

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me"? A And then my father rushed over to the stove, and picked up the iron, and came over it, to strike the defendant, and he held it that way (illustrating), and the defendant put his hand out to prevent himself getting hit with it, and he struck his hand, and the iron went up in the air, and the iron came down, and struck him on the top of the head, and he fell to the floor, striking his head on the iron brace that was there; and he lay there; and my mother went out in the hall, and commenced to scream, and I said, "Don't scream, mama. That don't do any good. Let's get a doctor. There is no use of hollering."

And she went back, and lifted the deceased's head on her lap, and held it there, screaming and yelling.

And then she asked Mr. Lefevre to kindly lift him over to the wall, and set him up in a sitting position, which he done.

And he took a towel, and wiped off his head, and wrung the towel out; and the officer came in, and asked what was the trouble; and my mother accused the defendant of striking him on the head with the iron, and he denied it.

Q And what did you say? A I didn't say nothing.

Q Was anything said in the patrol wagon, on the way to the station house? A No, sir.

Q Did the officer say anything to you? A No, sir.

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Q Did you say anything to the officer? A No, sir.

Q Did the defendant say anything to the officer?

MR. ELY: Objected to.

BY MR. ROSENTHAL:

Q Was anything said in the police station? A My mother made a statement.

Q Well, what was the statement? Never mind. Was anything said after that. Were you and your mother both locked up together? A No, sir, not at first. We were both put in separate cells, and then the matron put us both together, by request of my mother.

MR. ELY: I object to that, and ask to have it stricken out, "at the request of my mother." I ask to have it stricken out as incompetent, immaterial and irrelevant.

THE COURT: Strike it out. Get the fact, not what was said.

BY MR. ROSENTHAL:

Q Did you say anything to your mother, or anybody, in the station house, after you were locked up? A No, sir.

Q In reference to this case? A No, sir.

Q Was anything said by your mother to you? A Not that I can remember.

Q Did you ask your mother why she accused Otto of doing

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that, of striking the deceased?

MR. ELY: I object to that unless the time and place are located.

BY MR. ROSENTHAL:

Q In the station house? A In the station house?

Q Yes. A I don't remember whether I asked her or not.

Q Did you ask your mother at any time or place why she accused Otto of having struck the deceased? A I asked her in the House of Detention, when we were locked up. She said that she had made the statement, and wasn't going to change it, but she knew it was an accident.

Q Was there anybody else present but you and your mother? A There was a few of the girls that was in the House of Detention, but I don't know any of them.

Q Did you make any statement to any police matron? A No, sir.

Q Did your mother, to your knowledge? A No, sir, not to my knowledge.

Q Did you at any time see that iron in the hands of Otto? A No, sir, never.

Q At the time -- how many chairs were there in that room? A One chair.

Q And, at the time your mother came, was she sitting or standing? A She sat on a chair.

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Q And was your father sitting or standing? A Standing by the tubs.

Q Are you positive that he wasn't sitting? A Positive.

Q Did you see him sit at any time there? A No, sir.

Q Are you positive as to that? A Positive.

MR. ELY: I object to his cross examining his own witness, after she has made a statement.

THE COURT: Yes, she said so, and she is already under her oath, and the question calls for her knowledge; and, therefore, to follow it with the question, "Are you positive?" is a waste of time.

BY MR. ROSENTHAL:

Q How often did your deceased father come to your house?

A My deceased father had only been to that house a couple of times, twice, to my knowledge.

Q What was his attitude or disposition there, in your house? A He came over on Easter Sunday --

MR. ELY: Objected to.

A (Answer continued) And he came over drunk.

MR. ELY: Objected to. Wait, when an objection is made. Will you please instruct the witness?

THE COURT: Yes. When an objection is made,

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you are to await my instruction before answering.

Please remember that. Ask the question again, please.

(It is repeated by the stenographer)

MR. ELY: I object.

Objection sustained; because it is not sufficiently definite, and for other reasons.

MR. ROSENTHAL: Exception.

BY MR. ROSENTHAL:

Q Was your deceased father of a quiet or quarrelsome disposition?

MR. ELY: Objected to.

THE COURT: Sustained.

MR. ROSENTHAL: Exception.

BY MR. ROSENTHAL:

Q What was his disposition?

MR. ELY: I object.

THE COURT: Sustained.

MR. ROSENTHAL: Exception.

BY MR. ROSENTHAL:

Q Did you ever complain to your mother about ill treatment by Otto? A No, sir.

MR. ELY: I object to that.

THE COURT: Well, she has already answered that

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she did not. Do you want to show that the deceased was a man of bad reputation for quarrelsomeness, or anything of the kind?

MR. ROSENTHAL: Yes, sir.

THE COURT: Well, the proper way to do it is to offer the evidence of reputation.

MR. ELY: Not, if your Honor please, as matter of fact they are bound by the answers that they brought out on this subject from a witness that they made their own, namely, the wife of the deceased.

THE COURT: Well, we will meet that difficulty when it arises, if it arises at all.

MR. ROSENTHAL: If your Honor please, I just want to explain that this witness is also subpoenaed by the People.

MR. ELY: I haven't called her.

THE COURT: Well, I only want to call your attention to the fact that I have ruled out such questions, and it occurred to me that that testimony was competent, and I merely wished to suggest to you to prove it according to law. Evidence of reputation or character is provable in a certain way, and you can look that up, when the time comes, if you choose. Go on, now.

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BY MR. ROSENTHAL:

Q If your mother said that she never quarreled with Otto, is she telling the truth?

MR. ELY: Objected to.

A No, sir.

MR. ELY: Now, will you kindly instruct this witness again?

THE COURT: Yes. Do not be so swift in your answers. When an objection is made, wait until I rule.

MR. ELY: And I object to the answer, and ask to have it stricken out. I must respectfully insist that that is an improper question.

THE COURT: Well, I think it is, Mr. Ely.

MR. ELY: And that the answer should be stricken out, and the jury directed to disregard it. It is perfectly improper, from my standpoint, to put this witness on, and ask her to give her opinion of another witness's testimony.

THE COURT: But, I think we will make more progress by letting it stand. She has already contradicted her mother. Proceed, please.

MR. ROSENTHAL: That's all.

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CROSS EXAMINATION BY MR. ELY:

Q You say that the deceased was intoxicated, on this evening; don't you? A Yes, sir.

Q Did he stagger? A Yes, sir.

Q Staggered considerably, didn't he? A Yes.

Q And your mother staggered considerably, too; didn't she? A Well, my mother didn't stagger as much as my step-father.

Q Well, I didn't ask you that. She staggered considerably; didn't she? A No, sir.

Q But she staggered some? A No, sir, she didn't.

Q Why, then, did you say a minute ago, that she didn't stagger as much as your step-father? A Well, when she had my father's arm, they were both going from side to side.

Q They were reeling along, from side to side?

A I couldn't say that she staggered any more than he did.

Q But you say that he was pretty drunk? A Yes, sir.

Q And did you testify before the Coroner's Court?

A Yes, sir.

Q Was this question asked you: "Q Was he intoxicated?"

A Yes.

MR. ROSENTHAL: What page?

MR. ELY: 33.

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BY MR. ELY:

Q And did you make this answer: "A. As far as I could see, he had drink in him"? A (No answer)

Q Answer that?

MR. ROSENTHAL: wait a moment.

MR. ELY: Now, I object to the counsel saying to her to wait. I object to his instructing the witness, when she is under examination by me.

THE COURT: Answer the question.

(The question is repeated by the stenographer)

A Yes, sir.

BY MR. ELY:

Q You didn't say anything in the Coroner's Court about his being very drunk, and staggering; did you? A No, I wasn't asked that.

Q You didn't say it; did you? A No, sir.

Q But you were asked, was he intoxicated? A Yes, sir.

Q And all that you answered was, as far as I could see he had drink in him"? A Yes.

Q Now, as matter of fact, you had been in his rooms, and had taken two glasses of beer, at the same time that he had had beer? A Yes, sir.

Q And you could see that he had swallowed beer?

A Yes, sir.

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Q Were you drunk? A No, sir.

Q You had had as many drinks as the deceased; hadn't you, during the time that you had been with the deceased?

A During the time I had been with him, yes.

Q And you went around to the deceased's house, about 8 o'clock in the evening; didn't you? A Yes, sir.

Q And you had been there with the deceased from 8 until you and the deceased and Gladys, your daughter, and your mother came out? A Yes, sir.

Q And you went -- you all went to the butcher's?

A Yes, sir.

Q And you then got \$3 from your mother; didn't you?

A Yes.

Q And then you went to the -- to 1708 Park Avenue; didn't you? A Yes.

Q And your mother bought a fowl, or did her business at the butcher's? A Not my dinner; no, sir.

Q Your mother did her business at the butcher's, didn't she? A Yes.

Q And she changed a five dollar bill and gave you three dollars; didn't she? A Yes.

Q And you all acted in a perfectly natural way; didn't you? A Yes.

Q And then you went to this -- to the place where you had

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been living with the defendant? A Yes.

Q Now, you have been living with the defendant for over three years? A Yes.

Q And you are a married woman, and not divorced?

A Yes.

Q Now, when the deceased came back from -- oh, by the way, do you know Gallagher? A Yes.

Q Jack Gallagher? A Yes.

MR. ELY: Come in here, Gallagher.

BY MR. ELY:

Q Now, do you know this man here (indicating a man at the bar)? A Yes.

Q How long have you known him? A About 13 or 14 years, I've known him.

Q Now, when you got around to your apartment, or your flat, in 1708 Park Avenue, on the evening in question, or the morning -- what time did you get there? I'll ask you that?

A 12 o'clock.

Q I suppose, Lizzie, that you mean that it was about 12? You didn't see exactly the time, you didn't look at a clock? A No, sir; somewhere around 12.

Q And that's the best of your recollection? A Yes, sir.

Q And, by the way, your counsel said that you were under subpoena from the District Attorney's office. That's right,

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isn't it? A Yes.

Q And when you came up to see me, the other day, by advice of counsel, you declined to answer any questions; didn't you?

MR. ROSENTHAL: And I object to that, sir.

She wasn't there by advice of counsel, she didn't go up there by advice of counsel. She was dragged up there?

MR. ELY: And I object to any such remark. It is utterly untrue.

MR. ROSENTHAL: And it is true.

THE COURT: Well, gentlemen, stop this argument. Proceed with the case. Please repeat the question.

(It is repeated by the stenographer)

A I wasn't advised by my counsel to go upstairs. I was taken upstairs by one of your own men.

BY MR. ELY:

Q No. But I am asking you whether, when you got upstairs, by advice of counsel, you refused to answer any questions? A Yes.

Q Well, now, Lizzie, we have got to the premises.

MR. ROSENTHAL: Well, if your Honor please, again I object to his calling her Lizzie. I don't

think that there is enough familiarity for him to call her by her first name, any more than I would call Mr. Ely by his first name.

THE COURT: I think, Mr. Ely, it would be better to call her by her name.

MR. ELY: Well, I don't know what her present name is.

BY MR. ELY:

Q What is your real name? A Well, my real name is Mrs. Garry, but I've been under the name of Lefevre.

Q Well, then, your name is Elizabeth Garry?

A Well, yes, but I prefer to be called Mrs. Lefevre.

Q Well, Elizabeth Garry, we have got to the point when you reached your home, on the morning of the 29th of April, 1906. A Yes, sir.

MR. ROSENTHAL: Well, I object to his calling her Elizabeth Garry.

MR. ELY: Well, if your Honor please, she has just said that that is her real name, and so I call her by it.

THE COURT: Well, I think it would be better to call her Mrs. Garry, and not Elizabeth Garry.

BY MR. ELY:

Q Now, then, who first said anything about any violence

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that had been used by the defendant towards you?

A I don't understand what you mean.

Q (Question repeated) A My mother.

Q Now, you ~~were~~ testified at the Coroner's Court, didn't you, Witness? A Yes, sir.

Q And you testified there that the defendant said, "Lizzie take off your things"?

MR. ROSENTHAL: I object at this point. I want to know what page he is reading from.

BY MR. ELY:

Q "I said, 'I will, provided you don't slap me, as you did, last Saturday'?"

MR. ROSENTHAL: If your Honor please, I object to that question, inasmuch as it is not the starting of the answer. The answer was started, "Then he got out of bed, and came out in the kitchen, and said"

THE COURT: I will overrule your objection, and allow the question to be asked. Answer the question.

A Yes; I said it.

BY MR. ELY:

Q Now, before the defendant had said to you, "Lizzie, take off your things," and you had replied, "I will, provided you don't slap me as you did, last Saturday," had anything been

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said by anybody as to any violence that had been used by the defendant toward you? A My mother told my father --

Q No, no. I am not asking about that. I am asking whether or not anything had been said there, at 1708 Park Avenue, on the morning of the 29th of April, 1906, in your kitchen; whether anything had been said there by anybody, as to any violence used toward you by the defendant, prior to your remark to the defendant, in reply to his direction, "Lizzie take off your things," and your reply, "I will, if you don't slap me, as you did, last Saturday night"?

A (No answer)

Q Please answer. A My mother said, if he was going to slap me, I should go home with her.

Q Now wait a minute. Was that said before or after you had said to the defendant, "I will, provided you don't slap me, as you did last Saturday night"? A I am not positive.

Q You are not positive on that subject? A No, sir; I am not positive.

Q Why, did any question of violence that had been used toward you come up before you mentioned it yourself, that evening? A (No answer)

Q Go on. Answer the question. Just answer the question, won't you? A I couldn't really say; I am not posi-

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tive.

Q Well, what is your best recollection? A I can't say.

Q Why, under what circumstances did the question of any violence between you and the defendant come up? A On account of my mother. It was my mother that said -- when I told her that he had slapped me, the Saturday previous.

Q Well, when did you tell her that? A I told her that over in her flat.

Q Oh yes. You had complained to her about that; hadn't you? A I hadn't complained. I simply told her. I didn't make no complaint of it.

Q But you had told her of it? A Yes; I had told her.

Q And how long before the 29th of April, 1906, had you told her that the defendant had slapped you?

A I told her, that evening.

Q Well, then, you had told her before you had got --

A Before I went to my flat.

Q You had told her before you had returned to your flat, with your mother and father? A Yes, sir.

Q Now, had any question of any violence been raised in this kitchen, on the morning in question, before you spoke of it yourself? A Yes, sir. My mother spoke of it.

Q Well now, what did your mother say? A My mother said that he had hit me, and I was to go home with her.

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Q And when did your mother say that he had hit you?

A When my father came in.

Q Now, when your step-father came in, what did your mother say? Was the defendant in the room? A Yes, sir.

Q Now, what did your mother say? A My mother said that the defendant had slapped me, the Saturday previous, and I was to go home with her.

Q Now, had she said anything about any violence, before your step-father returned to the room? A Not that I can remember.

Q Well, you wouldn't say that she did, and you wouldn't say that she didn't? A No, sir.

Q Well, now, what was said then? Just give the words of your mother that you say she used, when you say your step-father returned to the room, as nearly as you can remember them. A When my step-father returned, my mother said that the defendant had hit me, and I was to go home with her.

Q No, no. She didn't say the defendant. He wasn't the defendant then. A Well, she said that my husband had hit me; she addressed him as my husband, and always did before.

Q Who did she address? A Mr. Lefevre.

Q Did she look at him, and say, "My husband had hit me"?

A No; she said, my husband had hit me, the Saturday previous, and if he was going to hit me again, I was to go home with

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her.

Q Now, that you remember, and swear positively to, now; do you? A Yes.

Q Now, do you remember testifying in the Coroner's Court? A Yes.

Q Do you remember -- did you testify -- page 31 -- "I went out in the kitchen, and mama said, 'It's a case of ignorance, and he don't know any better,' and then he got out of bed, and came out in the kitchen, and said, 'No, I'm not ignorant; but I'm going fishing, in the morning, and I want to get as much sleep as I can get.' He said, 'Lizzie, take off your things,' and I said, 'I will, provided you don't slap me, as you did last Saturday. That was the Saturday previous'". Now, did you so testify in the coroner's Court? A Yes.

Q Now, why didn't you say, in the coroner's Court, what you say here, that your mother said, previous to your remark to the defendant, "I will, provided you don't slap me, the way you did last Saturday"?

MR. ROSENTHAL: Objected to, as incompetent, immaterial and irrelevant.

THE COURT: Allowed.

MR. ROSENTHAL: Exception.

A I believe I did; didn't I?

BY MR. ELY:

Q I have read you what you said. Was it said there?

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A Was it said in the Coroner's Court?

Q No. Did you hear me read you some testimony, a minute ago? A Yes.

Q And did it appear in that testimony that you said that your mother had said to the deceased, that the defendant had slapped you, the previous Saturday? A No, not in that, it didn't.

Q No; it didn't appear there? A No, sir.

Q Now, as matter of fact, didn't your -- your step-father was slightly deaf; wasn't he? A Yes.

Q And, as matter of fact, didn't your father, your step-father, when he came back into the kitchen say, "Well, what was that?" A I don't remember.

Q And wasn't it then repeated, didn't you then repeat to him, that the defendant had slapped you, on the previous occasion? A No, sir.

Q And didn't he then tell you that he had reared you, and you could come home with him, if you were beaten, or words to that effect? A He said I could come home with him, yes.

Q If you were beaten, or words to that effect? A Not that I can remember.

Q Don't you remember his saying anything about your being struck, or slapped, or beaten, or anything in that connection?

A No, sir, not my father.

Q You swear that your stepfather didn't say anything of that description? A I won't swear, because I don't remember.

Q Did your mother say anything to you about being slapped, beaten, or maltreated by the defendant, in the defendant's presence, on that occasion? A Not to me. She said it to my father.

Q In the presence of the defendant? A In the presence of the defendant.

Q And wasn't it then that the deceased said, "Why, you can come home"? A Yes.

Q And it was after that -- what did the defendant say then? A He said I wouldn't go home; my home was there, and I should stay there.

Q Yes. And where was your step-father at the time that the defendant said that; where was the deceased?

A Right by the wash tubs, standing there.

Q Look at that diagram (indicating the diagram in evidence) and see if you understand it. Do you understand it?

A No, sir.

Q Now, see if I can explain it. See this (indicating)? A Yes.

Q Can you read that? A Yes, "Park Avenue".

Q Now you know that the apartment house that you lived in

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fronts on Park Avenue; doesn't it? A Yes.

Q And this is supposed to be Park Avenue here, and this is supposed to be an apartment house (indicating)?

A Yes, sir.

Q Now, you lived on the fourth floor; didn't you?

A Yes.

Q And you lived on which side of the floor? A On the south side.

Q On the what? On the south side; did you? A Yes.

Q And then you go up three flights of stairs; don't you, to get up to your apartment? A Yes, sir.

Q And then, when you get into your apartment, there are two doors; one that enters into a hallway that opens into the kitchen, and the other that enters into the parlor; two doors to get into your apartment, you know; one going into the -- A Into the kitchen.

Q No; into the hallway that opens into the kitchen?

A Yes, sir.

Q The hallway that opens into the kitchen? A Yes. And then there is a door leading right off that again.

Q Yes, sure. But the other door that I am talking about is the door that goes into the parlor, from the public hall? A Yes.

Q You know that, don't you? A Yes.

Q How long had you lived in that apartment? A I was there going on two months.

Q Well, but in two months you are able to tell where the doors are; aren't you? A Yes.

Q Sure. Now here is the door that leads into the parlor, that thing there, that stroke is meant for a door (indicating)? A Yes, sir.

Q And this is the hallway, see? The public hallway (indicating); do you understand that? A Yes, sir.

Q And so you go in here, and here is the public hallway (indicating)? A Yes, sir.

Q And here is a door, and you go into the parlor? A Yes, sir.

Q And the parlor looks out on Park Avenue? A Yes, sir.

Q Now you understand that, all about it; don't you? A Yes.

Q Now you see here -- see that -- that's another mark there, that's another door, that's meant for another door. And you see that it opens into this little hallway, which connects the kitchen and the bed room? A Yes.

Q And that's the way it is in your house? A Yes, sir.

Q Now do you understand that? A Yes, sir.

Q Now here is a doorway, and here is another one, and that

makes two? A Yes, sir.

Q And those are the two methods of getting in and out of that apartment; aren't they? A Yes, sir.

Q Now do you see this little thing there (indicating). Now that is supposed to be another door, and that's the door of a bed room that opens out into the little hallway?

A Yes, sir.

Q And do you see that? A Yes, sir.

Q And that's a door that opens into the toilet (indicating)? A Yes, sir.

Q And there was a door opening from the bed room into the little hallway? A Yes.

Q And this door that opens into the toilet (indicating)? A Yes.

Q And then this door that opens into the kitchen (indicating)? A Yes.

Q And here is the front door where you go in, this little mark (indicating)? A Yes, sir.

Q And now do you see that there is a room, back of this little hallway (indicating)? A Yes, sir.

Q And that has "kitchen" marked on it? A Yes.

Q Now is it a fact that, behind this little hallway, there is a kitchen? A Yes, sir.

Q Now do you understand that so far? A Yes.

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Q Now do you see "wash tubs"? And those are supposed to be wash tubs there (indicating)? A Yes.

Q And that is "sink"? A Yes, sir.

Q And this is "dresser"? A Yes.

Q And that is "stove"? A Yes.

Q Now, were those in your apartment? A Yes, sir.

Q Now, look at the diagram, and see if you understand it? A Yes; I understand it.

Q Now, I was asking you, when I had to interpret this thing -- now I ask you where the deceased was, and you said he was over here by the wash tubs (indicating)? A Yes.

Q And there are wash tubs? A Yes. He was standing by the one nearest to the sink.

Q Then you mark where he was. A No; you mark it.

Q No, excuse me. You must mark. I can't mark it.

A Well, I can't either.

MR. ELY: I ask your Honor to direct the witness to mark the diagram.

THE COURT: Mark it. It is your testimony. Write on the diagram.

MR. ELY: Now, make that a 4, instead of a 1, because it has already been used.

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BY MR. ELY:

Q Now, where was the defendant, when the deceased was standing over here, at 4 (indicating)?

MR. ELY: I will have to ask you to put another mark on here, in a minute.

A By the stove.

BY MR. ELY:

Q Well, go ahead. There is "stove"; see (indicating)?

A Right here (indicating).

Q Why not mark it 5? That's a good place for 5.

A All right, then, 5.

MR. ELY: My associate says it is 6 feet, 9 inches, by measurement according to the scale, that they were apart; but you, gentlemen, can figure it out yourself on the diagram.

BY MR. ELY:

Q And then what occurred when the defendant was this distance, which has been figured out, as 6 feet, 9 inches, from the deceased; what happened? A What happened?

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Q Yes, what occurred, what took place? A My father struck the defendant in the face.

Q Eh? A My father came right over from the tubs, and struck the defendant in the face..

Q How did he come over, first? A He made a dart over.

Q Well did he zig zag over (illustrating), or run right across? A Well, he run right across.

Q Well then he ran right over that distance? A Well, not exactly ran, because it isn't much of a distance.

Q Well how did he cover the distance? A He made a dart over towards the stove, and struck him in the face.

Q And did the defendant then fall on the stove? A No, sir.

Q What happened? A The defendant pushed him back.

Q The defendant didn't fall, at all? A No, sir.

Q Your father was pretty drunk, too, wasn't he; your step father, I mean? A Yes, sir.

Q And he made a straight dart right across; did he? A Well, I didn't notice whether it was a straight dart, or not.

Q But you noticed him going from one point to the other; didn't you? A Yes, sir.

Q And you noticed him going from the wash tubs over to

the stove, didn't you? A Yes.

Q And you noticed him as he came? A Yes, sir.

Q You looked? A Yes.

Q And did he come straight, or reel across? A I couldn't say; I was too excited to notice whether he reeled, or went straight.

Q But you did notice that he went over, and struck him a clip? A Yes, sir.

Q Where did he strike him? A That I couldn't say; somewhere about the face.

Q On the nose; wasn't it? A I couldn't say whether it was on the nose or not.

Q How did it appear to you? About on the nose?

MR. ROSENTHAL: Objected to. There is no testimony at all that it was on the nose.

MR. ELY: Now, if your Honor please, if she is prompted, you know, it is very easy for her to make statements.

THE COURT: Answer the question.

A I didn't notice where he struck him. I don't know whether he struck him on the nose or not. I know he struck him in the face.

BY MR. ELY:

Q Very well. Then how many blows did the deceased,

if you saw, hit the defendant with his fist? A At that time, he just struck him the once.

Q Just once? A Yes, sir.

Q And then what did the defendant do, after, as you say, the deceased had made the dart for him across the floor, and struck him in the face? A The defendant pushed him away.

Q Yes; just pushed him away? A Yes.

Q And did he push him away hard? A Yes, certainly; he pushed him away hard.

Q And how far did the deceased recede, when the defendant, as you say, pushed him away hard? A I didn't notice how far.

Q Well, was he within reaching distance of the defendant, then? A Yes.

Q Well, then, the defendant was near the stove all the time? A Yes.

Q And then, after the deceased had been pushed by the defendant, as you say, what happened? A Then my mother took up the broom, and started to beat him with the broom, then my father darted --

Q Now where was your mother at this time? A She was sitting right by the window, in the kitchen.

Q Now wait. We will have a look at this diagram once more. Will you take it please? Nowhere is the window in the kitchen? A It was right besides the stove.

Q I know. But where is it? A There don't seem to be

any on this.

Q What's this? (Indicating.) A Oh, is that supposed to be a window?

Q Shall I explain some more? A Well, I never saw one of those before, and so I don't know nothing about them.

Q Well, that's the reason why I am asking if I shall explain it. These things are meant for windows (indicating). Do you remember those windows; don't you? That is the window in bed room A, and the window in the toilet; and you do remember that there is a window in the kitchen? A Yes.

Q And one in the bath room? A Yes.

Q And don't you remember those two windows in the parlor? A In the dining room?

Q And those two windows in the parlor? A Yes.

Q Now you remember those windows, now; don't you?

A Yes.

Q And she was sitting away over here (indicating)?

A Yes, sir.

Q Now then I will ask you to put 6 where the deceased 's wife was sitting? A There it is (indicating).

Q "6"? A "6".

Q Now where was this broom that you say your mother got?

A Right in the corner of the window, right where she was sitting.

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Q Well was it behind her or in front of her? A It was behind her.

Q Well, then, she was sitting with her back to the broom; was she? A Yes.

Q And she was looking away from the broom; wasn't she? A Yes.

Q Your mother don't live in your apartment; does she? A No, sir.

Q And do you know whether she had any knowledge as to where the broom was, in that room, on the night -- on the morning in question, before, as you say, she took it? A She may have seen it, when she went to sit down there; I don't know.

Q No. I am not asking you what she might have done. You know? A No, sir.

Q Well, any way, she got up out of her chair, and turned around, and got the broom; did she? A Yes.

Q And that's one of the ordinary brooms that you sweep a room with; wasn't it? A Yes.

Q And how did she do it; did she take it by the handle, or by the broom part? A I didn't notice just how she took hold of it.

Q But you saw it in her hand, didn't you? Which end did she take hold of? A Down by the broom part.

Q Down by the broom part? A Yes, sir.

Q And where was the deceased, when the wife of the deceased turned and got the broom, as you say? A Why, he was over where he had been pushed by the defendant.

Q Well where was he pushed by the defendant? A I don't know just how far he went. He went over near the sink again.

Q He was pushed across the room in the direction of the sink? A I can't tell how far he went.

Q I said, only, he was pushed across the room in the direction of the sink? A Yes, sir.

Q And he went at least two or three feet? A That I couldn't say; I don't know.

Q Well you saw -- I will ask you how near the sink landed when -- after he was pushed? A I didn't notice; I couldn't say; I was too excited to notice how far.

Q Well I will ask you whether, perhaps, it was about in the middle of the room? A No, he was nearer to the sink than the middle of the room.

Q Well, after the defendant pushed the deceased, then the deceased was over nearer to the sink than he was to the middle of the room? A Yes.

Q Now, then, after the deceased had been pushed by the defendant further than the middle of the room, in the direction of the sink, what did you see your mother do? A I seen her beating him with the broom.

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Q Now, according to your last statement, your mother was in the corner, and had just seized the broom downnear the -- on the handle, down near the broom part? A I don't know how she handled the broom; I couldn 't say that. I only seen her beating him with the broom.

Q But you saw when she got the broom? A I seen her when she had it in her hand.

Q (Question repeated)? A No, sir; I didn 't see her pick it up.

Q But you said, a while ago, that you saw her get up and turn around, and get the broom? A Oh, no; I didn 't say that.

Q Well, if you said that, that was a mistake? A Yes, sir.

Q Where was your mother when you first saw her with the broom in her hand? If you ever did? A I seen her when she was beating the defendant with the broom.

Q Then you didn 't see your mother from the time you last noticed her sitting there in the corner, by the window, until she was out from the corner, with the broom in her hand, beating the defendant; is that right? A Yes, sir.

MR. ELY: What was that distance, Mr. Howe, from Point 5 to the sink?

MR. HOWE: According to the diagram, the scale of the diagram, about seven feet; and two feet four inches from point 5. to a point beyond the middle of the room, in the direction of the sink.

MR. ELY: Of course, gentlemen, you can make your own measurement on the diagram.

BY MR. ELY:

Q Now, when you saw the defendant being beaten by the wife of the deceased, I mean, by your mother, where was the deceased, at that time?

A When I saw my mother beating him with the broom, I saw my father run over to the stove.

Q Now where was he when you saw him start to run to the stove?

A Oh, I didn't notice where he was. I only just seen him run over, and pick up --

Q Well, I didn't ask you that. When you say a person runs from one place to another, of course, there must be some distance between the points, and I want to know that distance?

A Well, I couldn't say.

Q Well, two feet or three feet? How far did he run, if you recollect? As far as from me to the stenographer, or from me to you, or what?

A Well, about as far as from you to the stenographer.

Q Well, that's five feet. And then it was that, as you say, the deceased ran five feet towards the defendant, and then

what did he do? A He picked up the iron, and went to strike him with it.

Q Now wait a minute. Now what iron? A The flat iron.

Q And where did he find it? A On my stove.

Q The deceased picked up the flat iron? A Yes, sir.

Q And did he run straight, this time, or did he stagger?

A I seen him go over to strike the defendant with the iron.

I didn't notice whether he staggered or not.

Q You mean that you saw him go over to the stove, and pick up the iron? A Yes, sir.

Q And go to strike the defendant? A Yes, sir.

Q And he was pretty drunk, all the time, wasn't he?

A Yes.

Q Eh? A Yes.

Q And then he grabbed up this iron? A Yes.

Q And what did he do with it? A He went to strike him in the face with the iron, that way (illustrating).

Q Like that (illustrating)? A Yes.

Q He had the flat face of it up; had he? A Yes; just like that (illustrating). I don't know whether he had the point of the iron up or ~~not~~ down, or whether it was just in that shape (illustrating).

Q No. But the face of it was towards the deceased?

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A Yes, sir.

Q Now will you please take that in your hand? A Yes.

Q Now just show me. I'll get out of the way, all right, or it will be my own fault? A He went that way; he went to strike him with it (illustrating).

Q As you have shown? A Yes, sir.

Q Holding the iron this way (illustrating)? A Yes, sir.

Q Now, when the deceased, as you say, went with the iron in this method towards the defendant, just show me what the defendant did (illustrating)? A He struck his arm, like that (illustrating), and the iron went out of his hand, like that (illustrating).

Q Now, I am about as much taller than you, am I not, as the defendant was taller than the deceased? A Oh, no, you are taller.

Q I am a little taller than the relative height of the defendant over the deceased? A Yes, sir.

Q Well, now, you take this. Now you hit at me?

A This way (illustrating).

Q And that's the way he went; was it? A Yes; he struck his hand.

Q And how high did the iron go up? A About two or three feet in the air.

Q As high as that (illustrating)? A Well, I don't

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know whether it was about as high as that, but I know it went up in the air two or three feet.

Q It went up at least as high as that; did it (illustrating)? A Yes.

Q And then, when the iron came down, what happened?

A It struck the deceased on the head, and he fell to the floor. His head struck up against the iron brace, which is right at the foot of the wash tubs.

Q Now do you remember -- of course you do remember testifying before the Coroner's Court? A Yes.

Q And do you remember saying -- page 32 -- "My father struck out and hit my husband. My mother had a broom stick, and was beating my husband, and my father was beating him, and I went between them, and the broom stick struck me in the face. My father made a dash over to the stove, and picked up the iron. I was behind him, and the iron went up in the air, and fell on my father. I saw my father fall, and my mother rushed over to him, and she screamed, and rushed up and down, hollering, and I said, 'Mamma, let 's go and get a doctor, and not stand here, screaming. That's not going to do any good.' She run back, and picked up his head, and held it on her arm." Now is that right? A Yes.

Q Now did you say there that, when the deceased fell, he fell and struck his head on an iron? A No; I said he struck

his head at the foot of the wash tub.

Q Now, did you say it here, when I have read to you the testimony that you gave? A (No answer).

Q Will you please answer that question? A I don't know.

Q Well, you heard me. Now I will read it to you again, if you don't know. (Mr. Ely repeats the quotation). Now did you say there that your step father, the deceased, fell and hit his head on an iron? A No, sir.

Q Now, in answer to a further question by the counsel for the defendant --I ask you -- page 35,--if, in answer to this question you made this reply: "I want you to explain, to this jury and his Honor just how this flat iron struck your father. Your father was a right-handed man?" And now did you answer: "A Yes; my father stood over there (indicating), and my mother there (indicating), and I stood by the door near my husband. While my mother was beating my husband with the broom, my father went over, and grabbed the iron, and put the iron like this (illustrating), to strike him, and the iron fell out of his hand down"? Did you answer that? A Yes.

Q Did you say there that, as your step father, the deceased, fell down, he hit his head? A No, sir.

Q Eh? A No, sir.

Q I beg your pardon? Did you? A I don't think so; I am not sure.

Q Well did you? A I don't think so; I am not sure.

Q Well didn't you hear that answer read? Is it there, that he fell and struck his head on an iron bar? A No, sir.

Q Now, furthermore, was this question asked you -- next page -- "Q What did it do, when it came down?" Referring to the iron. "A It struck my father on the centre of the head, and he fell. Q And he went down? A Yes." Were those questions asked, and were they answered thus by you? A Yes, sir.

Q "Q When he fell, which way did he fall?" ? A Yes.

Q And did you say: "A He fell on his back, right by the end of the tub"? A Yes.

Q "Q By the end of the tub?" A Yes.

Q And was that question asked and answered by you?

A Yes.

Q "Q Where did his head strike? A Right near the foot of my wash tub"? A Yes, sir.

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Q Now, was this question asked you by this counsel (indicating Mr. Rosenthal): "Q Did it strike the foot of the wash tub? There is any iron brace there, as I understand?

A Yes."? A Yes, sir.

Q "Q Did it strike there?"? A Yes, sir.

Q And did you answer, "It laid right there"?

A Yes.

Q Now, when the defendant was struck by this -- by the deceased, did he fall down? A Did the defendant fall?

Q Yes. A No, sir.

Q He didn't fall? A No, sir.

Q He just pushed him away; did he? A Yes.

Q He didn't fall, at all? A No, sir.

Q Did he fall up against the wall? A No, sir.

Q You saw that? A Yes, sir.

Q And you are positive? A Yes, sir.

Q And that the deceased only made one blow with his fist at him? A Yes, at that time; yes.

Q And the deceased didn't hit him again until he got this iron, as you say, after running across the room, and hit him with the iron -- hit at him with the iron? A When my mother was beating him with the broom, he struck him in the face. I don't know whether he punched him or scratched him in the face, but his hand went up to his face.

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Q Well, I am not asking for anything that you are not sure of. Now when was it -- when the defendant pushed him away, you say, he pushed him beyond the middle of the room, towards the wash tub? A No; towards the sink.

Q And that's beyond the wash tubs? A Yes.

Q And then you have told us that he darted right across the room, and got this iron from the stove? A Yes, sir.

Q And hit him with it? A He didn't hit him with it; went to hit him with it.

Q And was it then that he struck him -- when was it, then, that he struck him, other than the first blow that you have told us about? A What's that question? I didn't hear that.

Q (Question repeated) A Before he picked up the iron, to strike him with the iron.

Q Then wait a minute. Then, after he had been pushed away the distance that you have stated, why, then, he came back, and struck at the defendant again, before he got the iron? A Before he picked up the iron.

Q How many blows did he strike him then? A I didn't notice; I don't know.

Q You weren't looking at them, then; eh? A I didn't notice how many blows he struck him. I know he struck him.

Q And what were you doing there all the time? Sitting

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there or standing there? A I was standing there.

Q Taking it all in? A Yes, sir.

Q And doing nothing? A I went over to try to prevent my mother from hitting him with the broom, when she struck me in the eye.

Q We have had that. We understand that. A When she hit me in the eye.

Q Then you didn't do anything? A Not first off.

Q And isn't it a fact that, as soon as the defendant had struck the deceased, you ran out of the room, taking Gladys, and calling out, "Father and mother, come home"?

A No, sir.

Q And that you didn't go back into the room until after the deceased was lying on the floor? A No, sir.

Q Do you swear that positively? A Yes; I swear that positively.

Q Now then, when did you last see Garry, before I pointed him out, in court, to-day? A I didn't see Garry here to-day.

Q I mean Gallagher. A I saw Gallagher about six or seven weeks ago.

Q Yes. And you had a conversation with callagher, didn't you? A No, sir, I didn't; only a conversation about his own wife; that's all.

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Q I didn't say anything about what the substance of the conversation was. A Yes; I had a conversation with him.

Q And didn't you, at that conversation, ask Gallagher to come down here, and swear that the deceased had made threats -- A No, sir, I didn't.

Q Threats to do bodily harm to an individual?

A No, sir.

Q Do you swear that positively? A I positively swear it; yes.

Q Didn't Gallagher go to you, in answer to your sending for him? A I didn't send for him.

Q I beg pardon? A I didn't send for him.

Q Did he go there of his own free will and of his own volition? A Yes, sir.

THE COURT: We will suspend here.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took an adjournment until Monday morning, October 29th, 1906, at 10:30).

TRIAL RESUMED.

New York, October 29, 1906.

L I Z Z I E L E F E V R E, her cross-examination being continued, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. ELV:

Q Now, you saw officer Taggart here, on Friday; didn't you? A Yes.

Q He is the officer who came into your apartments on the morning of the 29th of April, you recollect? A Yes, sir.

Q And did you have any conversation with Taggart, when he came into your apartments? A No, sir.

Q Did you hear -- you were not in Court when he was on the stand, testifying, were you? A I wasn't in Court.

Q (Question repeated) . A No, sir.

Q Well, did you ever see Taggart before the morning of the 29th of April, 1906? A No, sir.

Q Please speak out? A No, sir.

Q And have you ever had any trouble with Taggart, in your life? A No, sir.

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Q Do you know any reason at all why Taggart should come and say anything about you that wasn't true? A No, sir; I don't.

Q Now, on the direct examination in this -- on his direct examination, when he testified as a witness in this case, Taggart swore, "I asked Mrs. Garry what she knew about the case. She said there was a fight between her husband and the deceased, and that the deceased tried to strike her husband with a flat iron, and struck himself." Now, didn't you make that statement to Taggart on the morning of the 29th of April, 1906? A No, sir.

Q Positively you did not? A No, sir; positively.

Q Now, subsequently, he testified on his direct examination in this case, referring to you, "and then, in the patrol wagon, she said 'No, mother, you threw that iron at my husband, and you struck your own with it.'" You didn't hear him make that statement under oath? A No, sir.

Q But didn't you make that statement to him? A No, sir.

Q You swear positively that you never made it to Taggart, at all? A Positively.

Q Now, you saw Officer Ward, didn't you, that Sergeant?
A Yes, sir.

MR. ELY: Is Ward here? See if he isn't here yet.

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BY MR. ELY:

Q Well, you know who Officer Ward is, don't you? A Yes.

Q And he is the Sergeant before whom you appeared on the morning of the 29th of April, 19 06, in the 32nd Police Precinct Station; do you remember? A Yes, sir.

Q And did you make any statement to Ward? A Not that I can remember; no, sir.

Q Now, did you ever see Ward before the morning in question? A No, sir.

Q And you never had any difference with Ward, at all; did you? A No, sir.

Q You don't know why Ward should come here and say anything about you that isn't true at all? A No, sir.

Q Now, Ward, when he was on the stand, swore --- well, wait a minute. I withdraw that. Now, did you say anything to your mother, Mrs. Minnough, in the presence of Ward, when Ward asked you about this case? A No, sir; not that I can remember.

Q Well, I know, but do you mean by that that you have said something to your mother -- that you may have said something to your mother, in Ward's presence, and can't remember it? A I don't remember anything.

Q Now, please. I am asking you a question? A No, sir.

Q Eh? A No, sir.

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Q Well, now, Ward swore that, in your mother's presence, and in his presence, you, addressing your remarks to Mrs. Minnough, said, "You know that your husband took the iron, and, in striking my husband, hurt himself?" Did you say that?

A I don't remember, I can't say.

Q Well, now, then, you have sworn positively that you didn't make any statement to Officer Taggart? A Positive.

MR. ELY: Mrs. Valentine. Bring in Mrs. Valentine.

BY MR. ELY:

Q And you swore here, on your direct examination, the other day, that you had positively made no statement to Officer Taggart? A No, sir; I made no statement.

Q Eh? A No, sir.

Q Now, do you see this woman standing here, (indicating)?

A Yes.

Q You know who she is? A Yes.

Q Now, who is she? A She is the Matron from the 126th Street Station House.

Q And when did you see that woman for the first time?

A I saw her the night we were put in the Police Station. She put us in the cell.

Q Now, did you make any statement to this woman with respect to the occurrence in your apartment, on the 29th of

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April, 1906? A No, sir.

Q Did you ever see this woman before, Mrs. Valentine; before the 29th of April, 1906? A No, sir.

Q And you never had any words with Mrs. Valentine, or any trouble with her? A No, sir.

Q Do you know any reason why Mrs. Valentine should come here, and say anything about you that isn't true? A No, sir.

Q Now, when you went to the Police Precinct Station, on the morning of the 29th of April, 1906, after you had been before the Sergeant, you were taken away, you and your mother were both taken away, and handed over to Mrs. Valentine; weren't you? A Yes.

Q And did your mother make a statement to Mrs. Valentine as to what the case was? A That I don't remember; I don't know.

Q And did you then say -- well, don't you remember that Mrs. Valentine -- didn't Mrs. Valentine ask what the trouble was? A She didn't ask me; no, sir.

Q She didn't ask what the trouble was, in your presence? A No, sir; I don't remember.

Q Will you swear positively that she didn't? A I won't say positively; no, sir.

Q And didn't you say, "Mother, that isn't true. You lost your temper, and threw the iron at Otto, and Otto warded it

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and it struck Papa"? A No, sir; positively no I did not.

Q You swear positively that you didn't make that statement to Mrs. Valentine? A Yes; positively.

Q Now, you saw Mrs. Valentine, the next morning, too; didn't you? A Yes.

Q What? A Yes.

Q And do you remember that your mother had very poor clothing on? A Yes, sir.

Q And somebody brought her some clothing? A No; nobody brought her any clothing.

Q Well, you remember that she had very poor clothing on, that morning? A Yes, sir.

Q And don't you remember a conversation between Mrs. Valentine, yourself and your mother? A Mrs. Valentine --

Q Now, please. Yes or no? A Yes.

Q Now, do you recollect that you said, at that conversation, "Now, Mama, you know that Otto didn't throw that iron. What do you want to say that he did, for? Ain't you ashamed of yourself? You and Papa both have a habit of throwing things, when in a temper?" A No, sir; I didn't say that.

Q You didn't say that? A No, sir.

Q You say positively -- you swear positively that you didn't say it? A Yes.

MR. ELY: Now, call in Mrs. Tillman.

BY MR. ELY:

Q Now, you remember the Matron of the House of Detention?

A Yes, sir.

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Q And, the presence of Mrs. Tillman, didn't you say to your mother, or to Mrs. Minnough, "Mama, don't prosecute him, and Otto will do all that he possibly can for you"? A No, sir.

Q You swear that positively? A Yes, sir.

Q Now, had you ever seen Mrs. Tillman before you went to the House of Detention? A No, sir.

Q You know of any reason at all why Mrs. Tillman, the Matron of the House of Detention, should come here and say anything about you that isn't true? A No, sir.

Q Yet you say that you didn't have that conversation with your mother, namely, "Mama, don't prosecute him, and Otto will do all he possibly can for you"? A No, sir.

Q Now, do you know a person of the name of Walter Scott? A No, sir; I don't know anybody by that name.

Q Eh? A No, sir.

Q Well, haven't you seen Walter Scott around here, in attendance on the Court? The person that moved your furniture?

A I don't know the gentleman personally, no, sir.

Q Well, I knew; but don't you know him by sight? A Yes, sir.

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Q And haven't you ever spoken to Walter Scott? A No, sir; not in referring to the case.

Q I didn't ask you that. I asked you if you had ever spoken to a person called Walter Scott? A Yes, sir.

Q He has moved your furniture and stuff, hasn't he?
A Yes.

Q Now, didn't you tell him, at the time he came to move your furniture, that it wasn't Otto that threw the iron; isn't it true that you told him it wasn't Otto that threw the iron; it was your mother threw it at Otto, which hit your father, and your father laid low? A No, sir.

Q And didn't you also show the blood on the floor, which had been wiped up? A No, sir.

Q You swear that positively? A No, sir; positively.

Q Now, you recollect -- I have asked you two or three times, this morning, whether you said anything at all to Taggart, when Taggart came there, and you have told me that you didn't say anything? A No, sir.

Q Now, do you remember testifying in the Coroner's Court? A Yes, sir.

Q Now -- Mr. Rosenthal, at page 41 -- was this question asked you: "Q Did the Officer question you about the occurrence, shortly after he came? A Yes, sir." A I don't remember the officer asking me anything.

Q I beg your pardon. I am not asking that at all, now. I am asking if that question was asked you and you made that answer, to Mr. Rosenthal, who now appears here as counsel for the defendant: "Q Did the officer question you about the occurrence, shortly after he came? A Yes, sir." Was that question asked you, at the Coroner 's Inquest, and did you make that reply? A Yes, sir.

Q "Q Did you tell him the same story as you have told it here?" Was that question asked you? A Yes, sir.

Q And did you reply: "A Yes, sir." A I don't remember; I don't know.

Q Well, will you swear that you did not? A No; I won't swear that I did or did not.

Q And was this question asked you, at the Coroner's Court, and did you make this reply: "Q You heard his testimony on the stand? A Yes, sir." A Yes, sir.

Q "Q You still say you told him the same story? A I can't remember whether he did ask me that question or not." A Yes, sir.

RE-DIRECT EXAMINATION BY MR. ROSENTHAL:

Q Was anything said by you or by your mother, in the presence of the Matron, in the 126th Street Station?

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MR. ELY: I object. We have already had that, on direct. She has sworn that she didn't say anything in the presence of the Matron, or any police matron, at any time.

BY THE COURT:

Q What is your answer? Yes or no? A I didn't make any statement to the matron; no, sir.

BY MR. ROSENTHAL:

Q Was any statement made by your mother, in your presence?
A That I can't remember; I don't know.

WILLIAM D. PLUMB, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENTHAL:

Q How old are you, Mr. Plumb?

MR. ELY: I object. It is immaterial.

THE COURT: It is preliminary. He may answer.

A 35 years.

BY MR. ROSENTHAL:

Q What is your business? A Fireproofing, iron furring and metal lathing.

Q And where is your place of business?

THE COURT: What is this? A character witness?

MR. ROSENTHAL: Yes, sir.

THE COURT: Let me examine the character witness, and, if you are not satisfied with the information obtained, then you develop it.

MR. ROSENTHAL: very well, sir.

BY THE COURT:

Q Do you know the defendant? A Yes, sir.

Q How long have you known him? A Six years.

Q Do you know others who know him? A Yes, sir.

Q Do you know his reputation for peace and quietness?

Yes or no? A I do.

Q What is it? Good or bad? A I never heard of him having any trouble, fighting, or anything of the kind.

Q (Question repeated) A I consider it good.

CROSS EXAMINATION BY MR. ELY:

Q Did you ever hear his reputation for peace and quietness talked about, at all? A Talked about at all?

Q Yes. A Well, I don't remember ever having any such subject arise.

Q No. You don't remember of ever having heard his reputation for peace and quietness talked about at all?

A Daily contact with the man.

Q Well, now, now; I am not asking about daily contact. Will you answer the question? A I can't recall that I did.

Q And the first time that you ever heard anything said about his reputation for peace and quiet was after this thing happened, and you were asked to come here and testify as a character witness; is that right? A Yes, sir.

Q Now, did you employ this defendant? A Yes, sir.

Q And you are a boss; are you? A I am.

Q How many men do you employ? A 25 to 50.

Q Yes. And those employees you know simply in a business way? A I am a former mechanic myself.

Q Well, now, please. I am not asking you what you were, some time ago. But you know your employees only in a business way? A I know personally all of them.

Q But, have you ever been to the defendant's home, and gone about to social functions, or gone about at all, with him? A Yes, sir; member of the same organization, at one time.

Q I didn't ask you that at all. You have been at organization meetings with the defendant; is that what you mean?

A Yes, sir.

Q How long ago? A About five years ago.

Q About five years ago? A Yes, sir.

Q Well, now, how long is it since you hired or employed this defendant? A 15 months.

Q (Question repeated) A To the best of my recollection

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about 15 months. I didn't look at the time sheet.

Q No, no. Do you mean that you employed him for a period of 15 months, or was it fifteen months ago when you last employed him? That's what I want to know, Mr. Plumb?

A I last employed him about 15 months ago.

Q Yes. And since then, have you associated with him, and been around with him, and known anything personally about his character? A (No answer)

Q Yes or no. A I don't know as I can answer that. You will have to repeat the question. It is too much of a question to answer yes or no.

Q (Question repeated) A Not since he has been employed by me.

Q Then your answer is no, isn't it? A Yes.

MR. ROSENTHAL: If your Honor please, the other character witnesses that we have called haven't yet appeared. I'm now going to call the stenographer of the Coroner's Court.

THE COURT: Very well.

FREDERICK A. BAKER, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENTHAL:

Q What is your business? A I am the official stenograph-

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er to the Board of Coroners, of this Borough.

Q And were you the official stenographer before the Coroner, at the inquest to inquire into the death of Michael J. Minnough, held on the 4th day of May, 1906?

A I was.

Q And, as such official stenographer, did you make a copy of the minutes taken at that inquest? A I did.

Q Have you them with you, in court? A I have.

Q Will you kindly refer to the testimony of police officer John Taggart, page 3, and will you tell the jury and the Court whether policeman Taggart testified in that court?

A Officer John Taggart, 32nd precinct, yes.

Q And at that inquest, was the question asked of police officer Taggart: "Q And the deceased's wife --"

A On what page, Mr. Rosenthal?

Q Page 4 on our minutes. A Go ahead.

Q "Q And the deceased's wife said the defendant picked up the flat iron, and hit the deceased with it? A Yes, sir.

Q What did the deceased answer to that?" And did the officer reply to that question: "A. He said he didn't"? That's the answer? A Yes, sir.

CROSS EXAMINATION BY MR. ELY:

Q Now the officer isn't the point as much as the ques-

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tion. The question is: "Q What did the deceased answer to that?" Is that the question that you have down there in your book?

A Yes, sir.

Q And you recollect that the question preceding that, as you have just testified, was: "Q And the deceased's wife said the defendant picked up the flat iron, and hit the deceased with it?" And the answer to that is: "A Yes, sir".?

A Yes; undoubtedly.

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Q And the next question: "Q What is the deceased's answer to that?" Isn't it a fact that the question was:

"Q What is the officer's answer to that?"?

MR. ROSENTHAL: Objected to.

THE COURT: Allowed.

MR. ROSENTHAL: Exception.

A Why no. I have the word "deceased" distinctly in my minutes.

Q Well, you have made many mistakes, of course, as everybody else has in their business, and as you have in yours; haven't you? A I am liable to, yes.

Q Answer that question? A Yes; of course; I am not infallible.

Q And you remember, recently, in a case, that your minutes were quite erroneous when transcribed? A That, sir, was the fault of the amanuensis. My minutes were correct, sir.

Q I am saying, as transcribed? A Correct.

Q And you found that there were many mistakes in the minutes as transcribed? A I wouldn't say many, Mr. Ely. There were several.

Q Well, as to several and many, there may be a distinction? A Yes, sir.

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RE DIRECT EXAMINATION BY MR. ROSENTHAL:

Q Those notes that you have are the original notes made by you, are they not, Mr. Baker? A Oh, yes, yes.

JAMES LEHY, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENTHAL:

Q Where do you live, Mr. Lehy? A 1702 Park avenue.

Q What is your business? A Lather.

Q Do you know the defendant, Otto Lefevre? A Yes; I know him about four years.

Q About four years? A Yes, sir.

Q Do you know his reputation --

BY THE COURT:

Q Do you know others who know him? A Yes, your Honor.

Q Do you know his reputation for peace and quietness in the community in which he lives? A That's all, for all I know--

Q Yes or no, please? A Yes.

What's it? Good or bad? A Good.

CROSS EXAMINATION BY MR. ELY:

Q You were around with the defendant on the afternoon of the 28th of April, 1906; weren't you? A I was with him the --

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Q Now answer the question, yes or no? A Yes.

Q And you and he had several drinks together, didn't you? A I did; early in the day.

Q Now yes or no. Did you? A Yes; about three or four.

Q And you are a friend of the defendant's; are you? A Since working with him for a year.

Q (Question repeated). A Yes.

Q And you are an associate and companion of the defendant; aren't you? A Yes; I have been working with him.

THE COURT: Now have you any other witnesses present?

MR. ROSENTHAL: No, sir; not at this time.

THE COURT: Have you any proof of service of the subpoenas calling witnesses here this morning?

MR. ROSENTHAL: No, sir, I have not.

THE COURT: Well, then, what proof have you that you have subpoenaed the witnesses?

MR. ROSENTHAL: Well, we have subpoenaed them, from day to day, and they have been here every day.

THE COURT: Well, then, where is the man who served the subpoenas. I am not speaking of yesterday, or the day before, or Friday. We are speaking of the present day, and the present condition.

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MR. ROSENTHAL: They were subpoenaed, sir, but I don't know whether I subpoenaed them, or my brother did.

THE COURT: You don't mean to say that, if you subpoenaed a witness, you don't remember that fact?

MR. ROSENTHAL: I don't know exactly which witnesses I subpoenaed, and which my brother did.

THE COURT: Don't understand me to reflect at all on your word, but it is rather strange that, if you subpoena a witness, you don't remember the witness.

MR. ROSENTHAL: No. I simply state that I don't know whether I subpoenaed any for to-day. I have subpoenaed them for other days.

THE COURT: Well, here we are, doing nothing. If you have any witnesses, we will hear them; and, if you have not, you must give me proof of service. I do not wish to preclude the defendant of any of his legal rights to have any witness heard, and to have the case held until you can procure the witnesses, if you have used due diligence in getting them. If they are here now, or have been subpoenaed, we will wait for them; but, if they have not been subpoenaed for this morning, I cannot wait, because I do not know when they are coming. I might sit here for a week.

MR. ROSENTHAL: Well, I don't know any more about it than you do, your Honor.

THE COURT: Have you any witnesses, Mr. Ely?

MR. ELY: Yes, sir; in rebuttal. But, is the defense closed?

THE COURT: Well, I will allow the witnesses to testify, if they come in before the case is submitted to the jury. The defense is closed, because they have no witnesses; but, if they are coming in, I will hear them:

MR. ELY: And if the rights of the defendant are to suffer, I am as anxious that he should have his full rights as the counsel for the defendant. The People do not desire, in a case of this description, to insist upon the technical rights that the law allows them. If he has witnesses that will help him in his contention, I am perfectly willing that he should have an adjournment to get them.

THE COURT: Well, the only important witness, counsellor, whose name you have given me, is Mc Partland. So far as Lehy is concerned, you were wrong. You thought he was a witness to the facts, and it turns out that he was a witness to character. Do you know where he is now, Mc Partland?

MR. ROSENTHAL: I telephoned, this morning, to have him to come right down. He lives in 118th street, and the young man who answered the 'phone said that he would send for him at once.

THE COURT: I will not wait for character witnesses, if they are not here; I will not wait. You have had two already.

MR. ELY: And now, if your Honor please, I make this offer, in the interests of justice: If the defendant, or his counsel, can state that there are any material witnesses that are necessary for the defence, and that they can be produced, I am perfectly willing, if your Honor is agreeable, to put the case over until two o'clock. I don't desire to take any advantage of the defendant, although it may be that laches on the part of those that are looking after his interests has been committed. But I myself, as representing the County of New York, am never willing to avail myself of any technical advantage that I may have. The People don't wish, in a criminal case, that technical advantages, such as this, should be availed of by them.

THE COURT: Well, I don't see why you can't put your witnesses on, Mr. Ely.

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MR. ELY: No, sir; I don't care to put on rebuttal witnesses, until the defense is in.

THE COURT: Of course, I do not care to give any instructions. But I do not see anything else that I can do but to adjourn to two o'clock.

MR. ELY: And I am perfectly willing to adjourn until two o'clock, in the interests of the defense.

THE COURT: Let it be noted, then, Mr. Clerk, that the Court adjourns until two o'clock, at the request of the District Attorney, to enable the defense to get witnesses that are necessary to its case, they say; and that the Court consents to the adjournment against its will. And now, gentlemen, you must get out, and get busy, and get witnesses.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.)

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AFTER RECESS.

MICHAEL M O PARLAND, a witness called on behalf of the defense, being duly sworn, testified as follows :

DIRECT EXAMINATION BY MR. ROSENTHAL:

Q What is your business, sir? A Liquor business.

Q Where is your place of business? A At 118th street and Park avenue, northeast corner.

Q Were you in business at 118th street and Park avenue, on the 28th day of April, 1906? A Yes, sir.

Q You know the defendant, Otto Lefevre? A Yes, sir.

Q Did you know Michael J. Minnough in his life time?
A Yes, sir.

Q Did you, on the 28th day of April, 1906, see Michael J. Minnough? A Yes, sir.

Q Where? A At my place of business.

Q About what time was it? A About half past twelve o'clock, at night; between that and one o'clock on Sunday morning.

Q Do you know for what reason Michael J. Minnough came to

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see you?

MR. ELY: I object.

THE COURT: Sustained. It does not make any difference why he came there. You may show what was done after he got there.

BY MR. ROSENTHAL:

Q What was done, that night, by Michael J. Minnough, in your presence? A Nothing done; because he came --

MR. ELY: I object. Nothing done, is the answer.

THE COURT: Strike out everything following "nothing done."

BY MR. ROSENTHAL:

Q Did Michael J. Minnough ask you to sell him any liquor?

MR. ELY: Objected to.

THE COURT: Well, it is in evidence that he did, and it is not disputed; and it becomes cumulative. I don't know what you are trying to prove, but I apprehend it is this.

BY THE COURT:

Q Did you observe the condition of Michael J. Minnough, when he came in? A Yes, sir.

Q And what time did he come in? A About half past twelve o'clock, Saturday evening, or Sunday morning, you might call it.

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Q What day of the month was it? A Well, I guess it was about the 28th or 29th.

MR. ELY: I object, if he guesses, and ask to have it stricken out.

THE COURT: Yes.

BY THE COURT:

Q That is your best opinion? A Yes. Saturday was the 28th and Sunday was the 29th.

Q Did you afterwards hear of the death of Minnough? A I did.

Q And does that identify the time, to your mind? A The time, your Honor? I don't exactly remember.

Q Does the fact of hearing of his death identify to your mind his presence in your liquor store? A Yes, sir.

Q Now, when he came in, did you observe his condition? A I did.

Q You may state what you observed as to his condition? A Well, your Honor, I seen him in such a condition that I refused to sell or serve him.

MR. ELY: I object to that, and ask to have it stricken out.

THE COURT: Yes; I will strike that out, as irresponsible. That is your conclusion.

BY THE COURT:

Q You may state what you observed as to his condition?

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A Well, your Honor, he came in, and he appeared to be in such a condition that I wouldn't give it to him, at any hour of the day.

MR. ELY: And I ask to have that stricken out.

THE COURT: Yes. Strike that out.

BY THE COURT:

Q Now, we want to know just what you observed, and not what you concluded? A Well, I observed, your Honor, that he was under the influence of drink, heavily.

Q He was heavily under the influence of drink? A Yes, sir; and he staggered, coming into the place, and almost went on his hands (illustrating), and I refused to serve him or sell him.

MR. ELY: Objected to, the latter part of the answer, and I will strike it out.

THE COURT: Motion granted.

MR. ROSENTHAL: Exception.

CROSS EXAMINATION BY MR. ELY:

Q And that was after twelve o'clock; wasn't it? A Yes, sir.

Q And you were open; weren't you? A No, sir; I wasn't open. I had the side door open, and was cleaning up.

Q You had the side door open, and was cleaning up?

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A Yes, sir.

Q And then you wouldn't have sold to anybody, at that hour; would you? A No; I wouldn't.

Q Did you ever see that man before that night, or that day? A I did; many a time. Yes.

MARTIN J. MONAHAN, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENTHAL:

Q What is your business, Mr. Monahan? A Metal lathing.

Q And do you know the defendant? A Yes, sir.

Q Where is your place of business? A 1123 Broadway.

Q And do you know other people who know Otto Lefevre?

A In the trade, I do; yes.

Q Do you know his reputation as to peace and quietness in the community? Yes or no? A Yes.

Q Is it good or bad? A Good.

Q Do you know his reputation as to truth and veracity?

A, Good.

Q Is it good or bad? A Good.

CROSS EXAMINATION BY MR. ELY:

Q What do you say your name is? A Martin J. Monahan.

Q Was this defendant ever worked for you? A Yes, sir;

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four or five years at a stretch.

Q Now, I didn 't ask you anything but a simple question, as to whether he had ever worked for you or not? A All right, sir.

Q And when did he work for you? A About six or seven months previous to this case that's going on now.

Q About November of 1905, was it? he last worked for you? A Sometime around that, yes. I don't just exactly remember.

Q And from November, 1905, until December -- until April, 1906, had you seen him? A I met him on three or four occasions, that was all, but he hadn't been working for me.

Q Now you never heard anybody discuss his reputation for truth and veracity in your life, did you? You never heard anybody talk about his reputation for veracity; did you? A Well, among the men I have.

Q Well, now, do you mean to tell me that you have heard this defendant 's reputation for truth and veracity talked about among the men? A At times, yes.

Q And when did you ever hear it, and under what circumstances, Mr. Monahan? Did you ever hear it discussed?

A Well, in regard to different things, in regard to purchasing stuff, etc.

Q In regard to purchasing stuff? A Yes, sir.

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Q And who did you ever hear talk about it, and when?

A Well, I can't recall the people now, but I have heard it.

Q And from whom, and when and where, and under what circumstances? A Well, I can't just say now.

Q Well, you say that you have heard his reputation for peace and quiet talked about. When did you hear that talked about? A Well, I never heard that when he was in a position in my employ.

Q Well one minute. You never heard it talked about?

A Well, perhaps I did.

Q Well, but you said you didn 't, just now. Then you never heard his reputation for peace and quiet discussed?

A Yes.

Q Well what did you mean, a minute ago, by saying that you hadn 't? A What I meant a minute ago, when I said I didn 't?

Q Yes. A I only referred to when he was employed in my work.

Q What's that? A In my work.

Q When he was employed in your work? A Yes; Mr. Otto Lefevre.

Q This defendant? A Yes, sir.

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Q Well what are you talking about? I am asking you when you heard his reputation for peace and quiet discussed?

A I never heard it discussed, at all.

Q You never heard it discussed at all; did you? A No.

RE DIRECT EXAMINATION BY MR. ROSENTHAL:

Q Just a moment, Mr. Monahan. As matter of fact, didn't the defendant supervise and have charge of work, certain work for you?

MR. ELY: Objected to.

THE COURT: Sustained.

MR. ROSENTHAL: Exception.

THE COURT: Now, you may have another character witness, if you have one at hand. We will hear one more, if you desire to put on another character witness. You may do so, if you desire.

ROBERT M c CARTHY, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENTHAL:

Q What is your business, Mr. Mc Carthy? A Metallic lather.

Q Where is your place of business? A 622 St. Nicholas avenue.

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Q Do you know the defendant, Otto Lefevre? A Yes, sir.

Q Do you know others who know him? A Yes, sir.

Q Do you know his reputation for peace and quietness?

A Yes, sir.

Q Is it good or bad? A Good.

CROSS EXAMINATION BY MR. ELY:

Q Mc Carthy, how long have you known the defendant?

A About seven or eight years.

Q Are you a fellow worker of his, or are you an employer? A I am an employer.

Q And have you ever employed this man? A Yes, sir.

Q How long ago? A The last time, about three years ago.

Q, And did you ever employ him before that? A Yes.

Q And how long before three years ago? How long did you employ him prior to that? A Well he worked, on and off, for me for several years before that.

Q And he hasn't worked for you for the last three years?

A No, sir.

Q Have you seen anything of him during the last three years? A Oh, yes.

Q Where have you seen him? A Oh, around; the same as the rest of the men.

Q But he hasn't been working for you? A No, sir; but

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I have saw him different times.

Q And have you had any personal intercourse with him? Have you gone around with him, and gone to his home, or gone about with him, during the last three years? A No, sir.

Q And all you have known of him is as his employer knows his employes; isn't that right? A Yes, sir.

Q Now, Mc Carthy, did you ever hear anybody speak of the reputation of this man for peace and quiet? A Well I --

Q Yes or no? A Yes.

Q Well when did you ever hear anybody speak of it, before the 29th of April, 1906? A About three years ago.

Q And you haven't heard anything of his reputation for three years, since you employed him? A No more than in a general way. I have heard people speak about this case.

Q And, up to the time this case came up, since you last employed him, you hadn't heard anything about his reputation for peace and quiet? A No, not exactly.

MR. ROSENTHAL: The defendant rests.

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- R E B U T T A L -

S E L I N A V A L E N T I N E, a witness called on behalf
of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mrs. Valentine, what is your business? A Police Matron.

Q And for how long a period have you been Police Matron?

A Ten years.

Q And, on the morning of the 29th of April, 1906, where
were you detailed? A 32nd Precinct; East 126th street.

Q What's the number? A 148.

Q And, on the morning of the 29th of April -- well, I
will withdraw that, for a moment. What were your hours on the
morning of the 29th of April, 1906? A From six o'clock in
the evening, until eight, the following morning.

Q Well, that means from six o'clock on the 29th of
April, 1906, to eight o'clock on the morning of the 29th of
April, 1906? A Yes, sir.

MR. ELY: Now, stand up, Mrs. Garry.

BY MR. ELY:

Q Domyou see that woman standing there (indicating)?

A Yes, sir.

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Q And did you see that woman on the morning of the 29th of April, 1906? A Yes, sir.

Q Now did you hear of this -- I withdraw that. Where did you see this woman whom you have just identified as having seen, and whom I called Mrs. Garry? Where did you see her?

A In front of the desk, in the office.

Q Well, in front of the desk in the Police Station?

A Yes; in the Station House.

Q And did you take her anywhere? A Yes; I took her around to the Female Prison.

Q And who went with her, if anybody, when you did that?

A Her mother.

Q Do you know her mother 's name? A Yes, sir.

Q What is it, please? A Mrs. Minnough.

Q And in your presence did this woman, whom I called Mrs. Garry, and whom you have identified, say to Mrs. Minnough, "Mother, that's not true. You lost your temper, and threw the iron at Otto, and Otto warded it off, and it struck papa"? A Yes, sir.

Q Now, Mrs. Valentine, you had never seen these women before the morning of the 29th of April, 1906? A No, sir.

Q And you have no interest in this case? A No, sir.

Q Now, did you hear -- did you see this woman, whom I have called Mrs. Garry, and whom you have identified, later in the ~~XXXX~~ morning of the 29th of April, 1906? A Did I see her before that, did you say?

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Q No, later; after you had put them in the cell?

A Yes. I visited the prison, during the night.

Q And did you see them in the morning, too? A Yes; I talked to them, in the morning.

Q And, in the morning, did you hear this woman whom you have identified as -- whom I called Mrs. Garry, and whom you have identified, say, in the morning, "Mama, you know that Otto didn't throw that iron, and what do you want to say that he did for? Ain't you ashamed of yourself? You and papa both have a bad habit of throwing things, when in a temper"?

A Yes, sir.

Q Now, do you see this woman standing here (indicating)?

A Yes, sir.

Q And who is that? A That's Mrs. Minnough.

Q And she is the woman to whom you heard Mrs. Garry make the remarks that you have just testified to? A Yes, sir.

CROSS EXAMINATION BY MR. ROSENTHAL:

Q As a matron in that police station, it is your duty to take care of a good many women prisoners? A Yes, sir.

Q And about how many women prisoners, in general, do you interview, during six months or a year?

MR. FLY: Objected to.

THE COURT: Objection sustained.

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MR. ROSENTHAL: Exception.

BY MR. ROSENTHAL:

Q Was there anything else said by Mrs. Lefevre, or Mrs. Garry, other than what you have stated? A Mrs. Minnough spoke about the condition of her clothes. She was badly clothed.

MR. ELY: Well, I object to anything about Mrs. Minnough. I haven't brought out anything about Mrs. Minnough's testimony.

THE COURT: yes. I do not think that is important.

BY MR. ROSENTHAL:

Q When were you first spoken to in regard to appearing as a witness in this case? A When was I first spoken to?

Q Yes. A I didn't know anything about it, until I received a subpoena.

Q About how many times have you appeared as a witness for the State, in actions in these courts?

MR. ELY: Objected to.

A This is the first time.

MR. ELY: I object.

THE COURT: It is already answered. Don't answer, Madam, when an objection is made.

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BY MR. ROSENTHAL:

Q Did you say anything to either Mrs. Garry or Mrs. Minnough, at the time? A I asked them what the trouble was.

Q And is that all you said to them? A Yes; that's all.

Q And didn't you say to Mrs. Minnough, "Well, why don't you keep quiet? He's dead, any how"?

MR. ELY: I object to that. That is a conversation between Mrs. Minnough and this witness, and it is irrelevant.

THE COURT: Well, but it is cross examination and tends to indicate bias on the part of the witness.

MR. ELY: But it is conversation with a third party.

THE COURT: Precisely. But this is cross examination, and that question may tend to indicate a bias or interest on the part of the witness.

MR. ELY: Well, if that is the reason I don't object.

THE COURT: Well, I will admit it.

MR. ELY: It is calling for hearsay, you know, sir.

A No, sir.

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BY MR. ROSENTHAL:

Q And, outside of the statement that you say Mrs. Garry made, there was nothing else said by her? A No, sir.

JULIA TILLMAN, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mrs. Tillman, what is your business? A Matron of the House of Detention.

Q Matron of the House of Detention? A Yes, sir.

Q And for how long a period of time have you been connected with the Police Department? A 21 years.

Q And how long have you been connected with the House of Detention? A 21 years.

MR. ELY: Now, stand up, Mrs. Garry.

BY MR. ELY:

Q Now, do you know this woman here (indicating)?

A Yes, sir.

Q And did you see her shortly after the 29th of April, 1906? A Yes, sir.

Q Where did you see her? A At the House of Detention.

Q And do you know Mrs. Minnough, Mrs. Mary Minnough?

A That lady's mother?

Q Yes. A Yes.

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Q And did you see Mrs. Minnough at the House of Detention? There she is (indicating). Do you know that woman?

A Yes, sir.

Q Who is that? A That's the mother.

Q That's Mrs. Minnough? A Yes, sir.

Q And they went to the House of Detention on the 29th of April; did they? A Well, they came on a Sunday morning. I don't know whether you call it the 29th, or not.

Q Yes. Now did you hear the woman, whom I called Mrs. Garry, and whom you identified, say to Mrs. Minnough, "Mama, don't prosecute him. Otto will do all he possibly can for you"? A I did.

Q Now, Mrs. Tillman, you say that you have been in the House of Detention for 21 years, as a matron? A Yes, sir.

Q And did you ever see Elizabeth Garry or Mrs. Mary Minnough before the 29th of April, 1906? A No, sir, never before; nor since.

Q And you haven't any interest in this case, have you? A Not a bit; no, sir.

Q And you have never had any interest in, or knowledge of Elizabeth Garry or Otto Lefevre? A No, sir.

CROSS EXAMINATION BY MR. ROSENTHAL:

Q Do you remember exactly when it was that Lizzie Garry

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made this statement to you? A She didn't make it to me.

Q To whom did she make it? A When they came to our house, they were separated. The mother was kept separate from the daughter, so that they couldn't converse with one another; and they were kept so for all day Sunday, and all day Monday, up to about 11 o'clock in the morning; and then they were ordered that they could get together, and they met at the dinner table, between breakfast and dinner, and the daughter threw her arms around her mother, and there was a very touching scene.

MR. ELY: Well, never mind about that.

A (Answer continued) And that was all that was said. The daughter said that to the mother.

BY MR. ROSENTHAL:

Q Well, repeat the words. A Well, the daughter said, "Mama, don't prosecute Otto. Otto will do all he possibly can for you," and the mother answered back --

MR. ELY: Never mind that. It is incompetent.

BY MR. ROSENTHAL:

Q What did her mother say?

MR. ELY: Objected to.

THE COURT: Allowed, as part of the conversation.

A And the mother said, "I don't want anything to do with that man. I wouldn't take a crust of bread from him."

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BY MR. ROSENTHAL:

Q When were you first approached to be a witness in this case?

MR. ELY: Approached?

A I think it was Friday.

Q Didn't you make a statement to the District Attorney's office? A I don't know what you mean.

Q Weren't you interviewed by a representative of the District Attorney's office, sometime ago? A No, sir, never.

Q Not until this week? A Not until this week.

JOHN GALLAGHER, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Gallagher, do you know Lizzie Garry?

MR. ELY: Stand up, Lizzie Garry.

A Yes, sir.

BY MR. ELY:

Q Do you see her now (indicating)? A Yes, sir.

Q Now did you have a conversation with Lizzie Garry, about two or three days after Labor Day? A Yes.

Q Well Labor Day is the 30th of September, is it?

A No, sir; the 3rd of September, I believe it was.

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Q I mean the 3rd of september? A Yes, sir.

Q Now did you -- that was the last Labor Day? A Yes, sir.

Q The third of last month? A Yes, sir.

Q And did Lizzie Carry ask you to come down here, and testify that the deceased, Michael J. Minnough, had made threats to kill? A Yes, sir.

Q And you refused to do it? A Yes, sir.

CROSS EXAMINATION BY MR. ROSENTHAL:

Q Was that the only time that you saw Lizzie Carry, after the death of Michael J. Minnough? A Until I met her here, in court; until I see her in court.

Q Now, what time of the day was it that you saw her? A About 11 o'clock in the morning.

Q Did she send to you? A No; I met her in ^{her} my sister's house.

Q What was the reason for you calling at her house, that time?

MR. ROSENTHAL: Objected to.

THE COURT: Sustained.

BY MR. ELY:

Q You are a son-in-law of the deceased, aren't you? A I'm the husband of his step-daughter.

Q Now what did she say exactly to you, when you came to

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see her, that morning, in your own words?

MR. ROSENTHAL: I object. He hasn't said that he came to see her. He said that he met her, at her sister's house.

THE COURT: Change the form of your question.

BY MR. ROSENTHAL:

Q Where did you meet her, that morning? A Outside of her sister's house.

Q What did she say to you, outside of her sister's house, that morning? A She asked me if I would go to the corner with her, and we walked to the corner, and she asked me if I would buy a drink, and we went and had several drinks.

And, while we were drinking, she started to tell me about the case, we spoke about the case; and she asked me if I would go to the Tombs and visit with her. I believe she wanted to go down, the following day.

And then she asked me -- she said, "You know Otto wasn't a treacherous fellow, and Mike and you had some troubles; didn't you?" And I said, "No", and she said, "Well, won't you come down and testify that Mike threatened your life?" And I said, "No; I don't want to have anything to do with the case."

Q And is that the only thing that you discussed?

A Yes, sir; about the case.

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Q Didn't you discuss anything about your wife?

A No, sir.

Q Now at the time you spoke to her, were you in a state of intoxication? A No, sir.

Q And didn't you, with her, go to the house of one Weber?

A Of who?

Q Of Weber, on Third Avenue? A Yes, sir. She lived there, I believe. I took her home.

Q And didn't you lay in Weber's house the entire day, in a state of intoxication? A No, sir.

Q What time did you leave Weber's house, that day?

A Well, we got there, I guess it was -- it must have been three o'clock, and I wasn't there more than half an hour.

Q And what time was it you met Lizzie Garry? A 11 o'clock in the morning.

Q And do you mean to say that it took you that long to get to Weber's house, from 11 to 3? A No, sir; we were drinking in the saloon, and we sat and talked.

Q And did you walk or ride down to Weber's house?

A We rode down.

Q And where did he live, Weber? A 94th street and Third Avenue, as far as I recollect.

Q Have you ever been convicted of crime? A No, sir.

Q Well, as matter of fact, didn't Weber live in 85th

Street, instead of 94th Street? A 94th street is where we went.

Q Do you know any one by the name of Lillian West?

A No, sir.

Q Do you know anybody living in 167 East 118th Street?

MR. ELY: I object.

BY MR. ROSENTHAL:

Q By the name of Lillian West?

MR. ELY: I object.

THE COURT: It is a preliminary question. He

may answer.

A No, sir.

JOHN TAGGART, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Taggart, when you got to the premises 1708 Park Avenue, on the morning of the 29th day of April, 1906, did you notice the condition of Mrs. Mary Minnough? A Yes, sir.

Q And did you observe her condition as to sobriety?

A Yes, sir.

Q And what did you observe? A She was sober.

CROSS EXAMINATION: None.

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MR. ELY: The People rest.

THE COURT: Now, proceed with your summing up, gentlemen.

MR. ROSENTHAL: I have one witness, if your Honor please. I desire to rebut the testimony of the witness gallagher.

THE COURT: Oh, very good. Call him, then.

S U R - R E B U T T A L.

EDWARD WEBER, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENTHAL:

Q Where do you live, Mr. Weber? A I live at 91st Street, 108.

Q And how long have you lived there? A I have lived there since a month, about.

Q Where did you live since -- where did you live on or about April 29th, 1906? A I lived in 1523 Third Avenue.

Q Near what street is that? A 86th Street.

Q Do you know John Gallagher? A Yes; I saw him once, in my place.

Q Do you recollect the occasion when you saw him in your place? A Yes, sir.

Q With whom was he?

MR. ELY: Objected to. When was it, first?

BY MR. ROSENTHAL:

Q When was he at your place? A Well, it was about six or seven weeks ago, in the morning, around 11 or half past 11 o'clock.

Q With whom did he come? A A Mrs. Lefevre.

Q Did you notice the condition of John Gallagher at the time he came to your place? A Yes; he was intoxicated; drunk.

Q How long did he stay at your place? A Until 8 o'clock at night.

Q Do you recollect what he was doing all that time?

A He was mostly sleeping.

Q Sleeping from the intoxication?

MR. ELY: I object. No, no.

THE COURT: Sustained.

BY MR. ROSENTHAL:

Q And when you say he was intoxicated, you mean that he had such a drunk that he was staggering?

MR. ELY: Objected to.

A Yes.

MR. ELY: I object, and ask to have it stricken out.

THE COURT: Yes. You must let the witness testify.

BY MR. ROSENTHAL:

Q Well, describe to the jury exactly the condition of his drunkenness? A Well, he was very drunk.

CROSS EXAMINATION BY MR. ELY:

Q Now how long have you known Elizabeth Garry?

A Lizzie Garry? I know her about -- well, a quarter of a year.

Q Eh? You have what? A About a quarter of a year.

Q What do you mean by that? A She came into my house, with a friend of her.

Q Male or female? A A lady friend. And she brought her little girl with her.

Q No; I am not asking about that. I asked you how long you had known her, and you say she brought a friend into your place? A No; a friend brought her.

Q Oh, I am not asking you that. I want to know when and in what month you first met her? A Well, Lizzie Garry was brought into my place with a friend, to take care of her daughter.

MR. ELY: I object to that, and ask to have the answer stricken out.

THE COURT: Granted.

BY MR. ELY:

Q Now answer the question. A Well, Mrs. Lefevre come over into my house, about 11 or 12 weeks ago, and she had her little daughter with her, and I would take care of her little daughter.

Q Now, I am not asking that. (Question repeated)

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A Well, about 10 or 12 weeks ago.

Q And are you the person at whose house Gladys has been residing? A Yes, sir.

Q And that's the first time you ever saw Elizabeth Garry, about 10 or 12 weeks ago? A Yes, sir.

Q And, up to last Friday, you had the child at your place; did you? A Yes.

Q And do you run a saloon? A No, sir; I'm janitor.

Q Oh, you are janitor? A Yes, sir.

Q And you say it was 11 o'clock in the morning, do you, when -- A Well, about 11.

Q Now, please, please. I haven't asked you anything yet. You say it was 11 o'clock in the morning when you saw the person who was described as John Gallagher, and who has just gone out of the room? A Yes, sir.

Q And you say that you never saw him before the time that he came to your house? A No, sir.

Q With Elizabeth Garry; is that right? A That's the first time.

Q And you have never seen him since? A Yes, last Friday here, in court.

Q But between that time and last Friday, he was pointed out to you; wasn't he? A Yes.

Q And what time in the morning did you say you saw him?

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A Well, it was 11, or a quarter past 11; something like that; I can't say exactly.

L I Z Z I E G A R R Y being recalled by counsel for the defendant, testified as follows:

DIRECT EXAMINATION BY MR. ROSENTHAL:

Q Mrs. Garry, you have heard the witness Gallagher testify that you spoke to him, and requested him to appear as a witness in this case for Otto Lefevre. Is that true or not?

A No, sir.

MR. FLY: I object. She has already denied that, on the direct examination, when I laid a foundation for it, and has denied exactly the statement that I asked the witness Gallagher.

MR. ROSENTHAL: Question withdrawn.

THE COURT: The question is withdrawn.

BY MR. ROSENTHAL:

Q You have heard the witness Gallagher testify that, at the time he saw you, he wasn't intoxicated. Is that true or not true? A No, sir.

BY THE COURT:

Q What do you mean? A He was intoxicated.

BY MR. ROSENTHAL:

Q Do you recollect where Mr. Weber lived at that time?

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A Yes.

Q Where? A 86th Street and Third Avenue.

Q And do you recollect how you got there?

MR. ELY: I object.

A We walked down.

MR. ELY: Well, I don't object, if that is the contradiction.

BY MR. ROSENTHAL:

Q Do you recollect where the witness Gallagher first met you? A Outside of my sister's door.

Q Do you recollect what he said to you, at that time?

MR. ELY: I object. It is already in evidence, and it is disputed, the point that the District Attorney brought out. Anything else they are bound by.

THE COURT: Sustained. You have it in once.

CROSS EXAMINATION BY MR. ELY:

Q It was about 11 o'clock in the morning when he met you, in front of your sister's house; wasn't it? A No, sir; it was about half past eight or nine o'clock.

Q In the night? A No, sir; in the morning.

MR. ROSENTHAL: The defense rests.

MR. ELY: The People have no further testimony.

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MR. ROSENTHAL: Now, I ask your Honor to take away from the consideration of the jury the crime of manslaughter in the first degree.

THE COURT: Denied.

MR. ROSENTHAL: Exception.

(Mr. Rosenthal then summed up for the defense, and Mr. Ely for the People).

THE COURT: Gentlemen of the jury, it will not be possible for me to charge you at the conclusion of the case, to-day; and, as the case is one of importance, were I to submit it to you now, it might result in too prolonged detention.

I shall, therefore, adjourn court until tomorrow morning, and then charge you.

And, in the meantime, I admonish you not to talk about the case, and not to permit any one to talk with you about it; and not form or express any opinion concerning it, until it is finally submitted to you.

The court will now stand adjourned until tomorrow morning, at half past ten o'clock.

(The trial was then adjourned until Tuesday morning, October 30th, 1906, at 10:30 o'clock).

New York, October 30, 1906.

THE COURT: Are there any requests of law to be charged? Have you any requests of law to be charged?

MR. ROSENTHAL: Well, I have no requests, until I know what your Honor charges the jury.

THE COURT: Very good.

MR. ELY: Well, if your Honor please, I submit that the orderly way is, when requests are to be asked of the Court, that they be submitted, rather than read.

THE COURT: Well, it is better that way, but I suppose I will have to consider them if submitted orally.

THE COURT'S CHARGE.

Gentlemen of the Jury:

The defendant, Otto Lefevre, is charged by this indictment with the crime of manslaughter in the First Degree, and it is left for you, under the law,

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to determine whether or not he is guilty of that charge.

Manslaughter is homicide, and homicide is the killing of a human being. It is divided into two kinds or degrees, murder and manslaughter. In murder, there is a killing as the result of a design to kill. In manslaughter there is a killing, but without any design to kill. It is necessary for me, therefore, to give you this broad and general distinction, so that you may appreciate the more exact and technical definition of the crime, that I am coming to, in a moment.

I shall now define to you manslaughter in the first degree, and your duty, perhaps your only duty in this case, is to determine whether or not, beyond a reasonable doubt, the acts which the law says amount to and constitute manslaughter in the first degree have been proven against the defendant. If they have, convict him; and, if not, acquit him. That is all there is in the case, gentlemen.

But, before I come to the definition, I must tell you that the law presumes the defendant innocent, and requires the People to prove his guilt be-

yong a reasonable doubt; and, unless they do so, no conviction should be had.

The term "reasonable doubt" is one easily understood, but difficult and elusive of definition. But men accustomed to settle weighty and important affairs in daily life, and men skilled in the English language, as you are, I am quite sure know the meaning of the term. I can only define it to you by saying to you that you are expected to give to this case the same careful, and honest and conscientious consideration and decision that you give to the important affairs of your daily life. The law requires nothing impossible, and hence it does not require the People to prove the defendant's guilt beyond any possible doubt, because everything human is open to possible or imaginary doubt. For instance, it is possible that every witness who takes the stand lies in the testimony that he gives. So that the law requires nothing unreasonable or impossible. Therefore, if, after a careful and conscientious consideration of all the evidence in the case, there is in your mind a reasonable doubt, which you, gentlemen, as reasonable men, entertain, then give the defendant the

benefit of the doubt, and acquit him.

Homicide is manslaughter in the first degree, when committed without design to effect death; in the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon.

That is the charge against the defendant, that, without intending to kill, he killed the deceased, Minnough, with a flat iron, on the 29th of April, 1906, at the time and place referred to.

Now, if he did so in the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon, then, under the law, he is guilty of manslaughter in the first degree, as charged, and you should so find.

THE COURT: Do you want manslaughter in the second degree charged?

MR. ELY: Yes, sir.

THE COURT: Now, gentlemen, it is an old saying that the greater includes the less, and manslaughter in the first degree includes, in the law, manslaughter in the second degree. So that you may find the defendant guilty of manslaughter in the second degree, if manslaughter in the first degree

has not been proven against him to your satisfaction, beyond a reasonable doubt.

Manslaughter in the second degree exists when there is a killing without any design to effect death, in the heat of passion, but not by a dangerous weapon, or by the use of means either cruel or unusual.

So that you are called upon, first, to determine whether or not the defendant is guilty of manslaughter in the first degree, and, secondly, whether or not he is guilty of manslaughter in the second degree. But it does not mean that, because six of you believe the defendant is guilty of manslaughter in the first degree, and six of you believe that he is not guilty, that you may compromise upon manslaughter in the second degree. You are not here for that purpose, gentlemen.

You are here a true verdict to find in accordance with the evidence, and every one of you has taken an oath so to do; and if, for the purpose of coming to an agreement, you compromise, and find a verdict which is midway between the two, but which is not justified by the evidence, then those of you

who favor that, or do that, violate your oath, and violate the law.

But, if the evidence in the case does not convince you beyond a reasonable doubt, of the guilt of the defendant of manslaughter in the first degree, then you may consider whether or not he is guilty of manslaughter in the second degree; and, if the evidence satisfies you beyond a reasonable doubt of the guilt of the defendant of manslaughter in the second degree, then you may so find. But, if the evidence does not satisfy you, beyond a reasonable doubt, of the guilt of the defendant of either manslaughter in the first degree, or manslaughter in the second degree, then give the defendant the benefit of the reasonable doubt as to his guilt, and acquit him.

The defendant claims that he was beset and attacked by Minnough, the deceased, and that, in warding off the attack, by mischance and accident, and without any fault on his, the defendant's part, Minnough came to his death.

That makes it necessary for me to bring to your attention the law relating to excusable and justifiable homicide.

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Homicide is excusable, when committed by accident and misfortune, in doing a lawful act, by lawful means, with ordinary caution, and without unlawful intent.

THE COURT: Do you desire me to repeat that charge?

MR. ELY: Yes, sir.

THE COURT: Homicide is excusable, when committed by accident and misfortune, in doing a lawful act, by lawful means, with ordinary caution, and without unlawful intent. I have repeated that, gentlemen, by request, but I think that this case should be classed under the claim of justifiable homicide, which I will define to you:

"Homicide is, also, justifiable, when committed in the lawful defense of the slayer, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony, or to do some great personal injury to the slayer, and there is imminent danger of such design being accomplished."

Therefore, to sustain that defense, it must appear that this defendant had reasonable ground to apprehend a design on the part of Minnough to do him some great personal injury; not only reasonable

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ground for so believing, but that there must have been imminent danger of the design being accomplished, before he was justified in attacking Minnough.

But, if, as he says, it was the result of accident, simply in defending himself, that this happened, then, of course, you would be justified in excusing and acquitting the defendant.

Now, you must take the evidence into consideration, and apply your own good sense to it. It is for you to say what witnesses you will believe, and what evidence in this case you will accept.

The testimony of all witnesses is left to the jury for their determination. You may believe or disbelieve whomsoever you will.

If there was no evil intent whatever on this defendant's part; but, in defending himself, and throwing up the hand of one who was assailing him, this flat iron was cast into the air so that it fell down on the assailant's head, the defendant should be acquitted, if you believe it. Whether you believe it or not is a question which you must determine.

But, if on the other hand, instead of that, you

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believe this defendant attacked Minnough, without himself being attacked, and that with this flat iron he struck Minnough a blow on the head, then it is for you to say whether that comes under the definition which I have brought to your attention of manslaughter in its first degree, or manslaughter in its second degree.

Gentlemen, the case is with you.

MR. ROSENTHAL: Will your Honor charge the jury in regard to your denial of motions of the defendant?

THE COURT: Oh, yes.

Gentlemen of the Jury:

There have been various motions denied by the Court, motions to strike out testimony, and you will disregard those; they are disposed of; and, whenever that testimony was stricken out, you must entirely disregard it.

Now, as to good character, gentlemen. There has been testimony here as to the previous good character of the defendant. Good character is no excuse or palliation for crime; and, if the defendant's character has been as white and pure as the driven snow, and, at the same time, he committed

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manslaughter here, you should find him guilty. Good character, as I have said, is no excuse for the commission of crime; but, in determining whether or not he did commit the crime charged, then you may take into consideration the evidence touching his character; and, sometimes, of itself, it is sufficient to create a reasonable doubt, where, without it, there would not be any reasonable doubt.

MR. ELY: If your Honor please, the jury asks for the exhibits.

THE COURT: Is it consented to that the exhibits be taken by the jury?

MR. ROSENTHAL: Yes, sir.

THE COURT: Very good. Then you may take the exhibits with you, gentlemen.

(The jury found the defendant guilty of manslaughter in the first degree, with a recommendation to the mercy of the Court).

MR. ROSENTHAL: I ask that the jury be polled, if your Honor please.

THE COURT: The jury may be polled.

(The jury is polled by the Clerk).

MR. ROSENTHAL: If your Honor please, I move to

set aside the verdict, on the ground that it is contrary to the evidence, and the law, and the facts in this case.

THE COURT: Denied.

MR. ROSENTHAL: Exception. Would your Honor grant me a few days before sentencing this prisoner?

THE COURT: I will give you until next Monday, if you desire it.

MR. ROSENTHAL: Well, Tuesday?

MR. ELY: Well, Tuesday is Election Day; isn't it?

MR. ROSENTHAL: Well, then, Wednesday, if your Honor please. I will be very busy until Monday, and on Monday, and Tuesday is Election Day.

THE COURT: Then I will remand the defendant until Wednesday next.